

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SCOTT J. GARNER

Claimant

VS.

UNITED PARCEL SERVICE

Respondent

AND

LIBERTY MUTUAL INSURANCE COMPANY

Insurance Carrier

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Docket No. 214,340

ORDER

Respondent requested Appeals Board review of Administrative Law Judge Julie A. N. Sample's Award dated June 22, 1998. The Appeals Board heard oral argument in Kansas City, Kansas, on January 19, 1999.

APPEARANCES

Claimant appeared by and through his attorney, John G. O'Connor of Kansas City, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Stephanie Warmund of Overland Park, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge awarded claimant a 15 percent permanent partial disability based on the stipulated 15 percent permanent functional impairment rating. She further awarded 5.57 weeks of temporary total disability compensation and all outstanding medical expenses paid as authorized medical expenses.

The respondent contends claimant failed to prove his low back injury was caused by his work activities while employed part time by the respondent. Claimant was simultaneously employed full time by another employer. Respondent argues it is just as reasonable if not more so that claimant's work activities for the other employer were the cause of claimant's low back injury rather than his part-time employment with respondent. Further, respondent contends

claimant is not entitled to any workers compensation benefits because he failed to provide respondent with timely notice of accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds the Administrative Law Judge's Award should be affirmed.

The Appeals Board does so for the reasons stated in the findings and conclusions expressed in the Administrative Law Judge's Award. The Appeals Board hereby approves those findings and conclusions and adopts them as its own.

In addition, as to the timely notice issue, there was conflicting testimony and the Administrative Law Judge's evaluation of claimant's credibility is significant. The Administrative Law Judge made a specific finding that she could find no reason to disbelieve or distrust the claimant's recitation of the conversation he testified he had with his direct supervisor when he notified her that he hurt his low back while working for the respondent. Therefore, since the Administrative Law Judge had the unique opportunity to assess claimant's credibility, the Appeals Board affirms the Administrative Law Judge's finding that the claimant gave respondent timely notice of his work-related accident.

AWARD

WHEREFORE, the Appeals Board finds Administrative Law Judge Julie A. N. Sample's Award dated June 22, 1998, should be, and the same is hereby affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of February 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John G. O'Connor, Kansas City, KS
Stephanie Warmund, Overland Park, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director